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10 **UNITED STATES DISTRICT COURT**
11 **NORTHERN DISTRICT OF CALIFORNIA**
12 **SAN FRANCISCO DIVISION**

13 **FEDERAL TRADE COMMISSION,**

14 Plaintiff,

15 v.

16 NEXTCLICK MEDIA, LLC, a Delaware
limited liability company, dba Stop
17 Smoking180.com,
Stopsmokingresolution.com,
18 Beautifulskin.com, and
OnLineDirectProducts;

19 NEXT INTERNET, LLC, a Delaware
limited liability company,

21 KENNETH CHAN, individually and as an
officer of NEXTCLICK MEDIA, LLC, and
22 NEXT INTERNET, LLC, and

23 ALBERT CHEN, individually and as an
officer of NEXT CLICK MEDIA, LLC,

24
25 Defendants.
26

4:08-cv-01718 VRW

[Proposed]

**TEMPORARY RESTRAINING
ORDER WITH ASSET FREEZE,
APPOINTMENT OF TEMPORARY
RECEIVER, AND OTHER
EQUITABLE RELIEF, AND
ORDER TO SHOW CAUSE WHY A
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

27 Plaintiff Federal Trade Commission ("FTC" or "Commission") has filed its
28 Complaint for permanent injunction and other equitable relief in this matter pursuant to
Temporary Restraining Order

1 Section 13(b) of the Federal Trade Commission Act (“FTC Act”), 15 U.S.C. § 53(b), and
2 Section 917(c) of the Electronic Fund Transfer Act (“EFTA”), 15 U.S.C. § 1693o(c), and
3 has applied with notice for a temporary restraining order with asset freeze and other
4 equitable relief and for an Order to Show Cause Why a Preliminary Injunction Should
5 Not Issue (“Order”) pursuant to Fed. R. Civ. P. 65(b). The Court has considered the
6 pleadings, declarations, exhibits, and memorandum of law filed in support thereof and
7 makes the following findings of fact:

8 1. This Court has jurisdiction over the subject matter of this case, and there is
9 good cause to believe that it will have jurisdiction over all the parties to the case and that
10 venue in this district is proper;

11 2. There is good cause to believe that Defendants NextClick Media, LLC, dba
12 StopSmoking180.com, StopSmokingResolution.com, BeautifulSkin.com, and
13 OnLineDirectProducts; Next Internet, LLC; Kenneth Chan; and Albert Chen have
14 engaged in and are likely to engage in acts that violate Sections 5(a) and 12 of the FTC
15 Act, 15 U.S.C. §§ 45(a) and 52, Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and
16 Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b); and that the Commission is
17 therefore likely to prevail on the merits of this action;

18 3. There is good cause to believe that immediate and irreparable harm will
19 result from Defendants’ ongoing violations of the FTC Act through the present
20 advertising, packaging, labeling, and marketing of the products Nicocure,
21 StopSmoking180, and ZeroNicotine unless Defendants are restrained and enjoined by
22 order of this Court;

23 4. There is good cause to believe that immediate and irreparable harm will
24 result from Defendants’ violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C.
25 §§ 45(a) and 52, Section 907(a) of EFTA, 15 U.S.C. § 1693e(a), and Section 205.10(b)
26 of Regulation E, 12 C.F.R. § 205.10(b), and that immediate and irreparable damage to
27 the Court’s ability to grant effective final relief for consumers in the form of monetary
28 redress will occur from the sale, transfer, or other disposition or concealment by

1 Defendants of their assets unless Defendants are immediately restrained and enjoined by
2 this Order; there is thus good cause for an asset freeze and the appointment of a
3 temporary receiver over the Receivership Defendants;

4 5. Good cause exists for requiring Defendants to produce an accounting of
5 their business assets, sworn financial statements, profit-and-loss statements, and an
6 accounting of individual assets and for giving the Commission immediate access to the
7 business premises of the Receivership Defendants;

8 6. Weighing the equities and considering the Commission's likelihood of
9 ultimate success, a temporary restraining order with asset freeze, appointment of a
10 temporary receiver, and other equitable relief is in the public interest; and

11 7. No security is required of any agency of the United States for issuance of a
12 restraining order. Fed. R. Civ. P. 65(c).

13 ORDER

14 DEFINITIONS

15 For the purposes of this Order, the following definitions shall apply:

16 1. "Assets" means any legal or equitable interest in, right to, or claim to any
17 real or personal property including, but not limited to, chattels, goods, instruments,
18 equipment, fixtures, general intangibles, effects, leaseholds, mail or other deliveries,
19 inventory, checks, notes, accounts, credits, receivables (as those terms are defined in the
20 Uniform Commercial Code), contracts, shares of stock, and all cash, wherever located;

21 2. "Billing Information" means any data that enables any person to access a
22 customer's account, such as a credit card, checking, savings, share or similar account,
23 utility bill, mortgage loan account, or debit card;

24 3. "Charge" means any amount charged or debited to a consumer's credit
25 card, checking, savings, share or similar account, utility bill, telephone bill, mortgage
26 loan account, or debit card, or any similar form of collecting money from a consumer;

27 4. "Clearly and conspicuously" means that:

28 a. with regard to print advertisements, solicitations, or other promotional

1 material, the disclosure shall be in a type size and location sufficiently
2 noticeable for an ordinary consumer to read and comprehend it, in print that
3 contrasts with the background against which it appears; in multi-page
4 promotional materials, the disclosure shall appear on the cover or first
5 page; and

6 b. with regard to Internet advertisements, solicitations, or other
7 promotional material, the disclosure shall be on the same electronic page
8 and next to any advertised price (including free), without the use of pop-up
9 windows or hyperlinks to other electronic pages to display material
10 information and not at the end of a web page that requires consumers to
11 scroll past unrelated information;

12 5. "Competent and reliable scientific evidence" shall mean tests, analyses,
13 research, studies, or other evidence based on the expertise of professionals in the relevant
14 area, that has been conducted and evaluated in an objective manner by persons qualified
15 to do so, using procedures generally accepted in the profession to yield accurate and
16 reliable results;

17 6. "Continuity Program" means any plan, arrangement, or system under which
18 a consumer receives periodic shipments of products or the provision of services without
19 prior notification by the seller before each shipment or service period, regardless of any
20 trial or approval period allowing the consumer to return or be reimbursed for the product
21 or service;

22 7. "Defendant" means NextClick Media, LLC; Next Internet, LLC; Kenneth
23 Chan; or Albert Chen, or any entity or name through which they do business including,
24 but not limited to, StopSmoking180.com, StopSmoking Resolution.com,
25 BeautifulSkin.com, and OnLineDirectProducts;

26 8. "Document" is synonymous in meaning and equal in scope to the usage of
27 the term in Fed. R. Civ. P. 34(a), and includes writings, drawings, graphs, charts,
28 photographs, audio and video recordings, computer records, and other data compilations

1 from which information can be obtained and translated, if necessary, into reasonably
2 usable form through detection devices. A draft or nonidentical copy is a separate
3 document within the meaning of the term;

4 9. "Financial institution" shall mean any bank, savings and loan institution,
5 credit union, financial institution, brokerage house, escrow agent, money market or
6 mutual fund, telephone or other common carrier, storage company, trustee or any other
7 person, partnership, corporation, or other legal entity maintaining or having control of
8 any records, accounts or other assets, owned directly or indirectly, of record or
9 beneficially, by any Defendant, including accounts or other assets which any Defendant
10 may control by virtue of being a signatory on said accounts;

11 10. "Material" means likely to affect a person's choice of, or conduct
12 regarding, goods or services;

13 11. "Preauthorized Electronic Fund Transfer," as defined by the Electronic
14 Fund Transfer Act, 15 U.S.C. § 1693a(9), means an electronic fund transfer authorized in
15 advance to recur at substantially regular intervals;

16 12. "Receivership Defendants" means NextClick Media, LLC, dba
17 StopSmoking180.com, StopSmokingResolution.com, BeautifulSkin.com, and
18 OnLineDirectProducts; and Next Internet, LLC; and

19 13. The terms "and" and "or" in this Order shall be construed conjunctively or
20 disjunctively as necessary, to make the applicable sentence or phrase inclusive rather
21 than exclusive.

22 **CONDUCT PROHIBITIONS (Sections I through III)**

23 **I.**

24 **Business Activities Related to Continuity Programs**

25 **IT IS HEREBY ORDERED** that, in connection with the advertising, promoting,
26 offering for sale, or sale of any product or service, Defendants, and their officers, agents,
27 directors, servants, employees, salespersons, independent contractors, attorneys,
28 corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or

1 entities in active concert or participation with them, who receive actual notice of this
2 Order by personal service or otherwise, whether acting directly or through any trust,
3 corporation, subsidiary, division, or other device, or any of them, are hereby temporarily
4 restrained and enjoined from:

5 A. Causing Billing Information to be submitted for payment, directly or
6 indirectly, for any product or service advertised, promoted, offered for sale, or sold as
7 part of an offer or agreement involving a Continuity Program, without obtaining the
8 express informed consent of consumers to be charged for any such product or service
9 using an account identified with sufficient specificity for consumers to understand what
10 account will be charged. To evidence consumers' express informed consent, Defendants
11 must disclose clearly and conspicuously, before consumers provide any billing
12 information or pay any fee, all material terms and conditions of the offer or agreement,
13 and obtain consumers' affirmative agreement. Material terms and conditions of an offer
14 or agreement involving a Continuity Program include, but are not limited to:

- 15 1. the fact that the customer's account will be charged unless the
16 customer takes an affirmative action to avoid the Charge(s);
- 17 2. the date(s) the Charge(s) will be submitted for payment;
- 18 3. the specific steps the customer must take to avoid the Charge(s);
- 19 4. all material terms and conditions of a guarantee, refund, or return
20 policy, or if Defendants have a policy of not making refunds or
21 accepting returns, a statement that this is Defendants' policy;
- 22 5. the fact, if true, that periodic shipments of products or the periodic
23 provisions or the continuation of services will occur without further
24 action by consumers;
- 25 6. a description of each good or the type of good to be included in each
26 shipment or a description of the services that will be performed or
27 continued;
- 28 7. if the products are shipped or services provided on a periodic basis,

1 the approximate interval between each shipment or service period or
2 the number of shipments or service periods per year;

3 8. the cost or range of costs for each shipment or service period,
4 including shipping and handling fees and restocking fees;

5 9. the minimum number of purchases or minimum service period
6 required by Defendants, if any; and

7 10. any limitations or restrictions concerning free trials that Defendants
8 offer to consumers in connection with a Continuity Program
9 including, but not limited to, the dates that a free trial period begins
10 and ends;

11 B. Misrepresenting, in any manner, expressly or by implication:

12 1. any fact material to a consumer's decision to purchase any product
13 or service sold or offered for sale by any Defendant; and

14 2. any material terms and conditions of an offer or agreement
15 involving a Continuity Program including, but not limited to:

16 a. the fact that the consumers' account(s) will be charged unless
17 they take affirmative action to avoid the Charge(s);

18 b. the date(s) the Charge(s) will be submitted for payment;

19 c. the specific steps consumers must take to avoid the Charge(s)
20 or to cancel the Continuity Program;

21 d. that any product or service offered as part of an offer or
22 agreement involving a Continuity Program is not offered as
23 part of such an offer or agreement, or may be purchased
24 without entering into such an agreement;

25 e. that consumers can "cancel anytime" or the period of time
26 within which consumers can cancel;

27 f. that consumers have agreed to receive additional products or
28 services;

- g. that consumers are obligated to pay for subsequently shipped products or services provided;
- h. that Defendants will honor consumers' requests to cancel their participation in Defendants' programs;
- i. that consumers will be able to cancel their participation in Defendants' programs easily; and
- j. that Defendants will use consumers' credit or debit card account numbers only to charge for shipping and handling;

C. Failing to honor a request that Defendants receive to cancel any sale or transaction involving enrollment in a Continuity Program, and to provide a refund in accordance with Defendants' disclosed guarantee, refund, or return policy; and

D. If Defendants require any mechanism in order for a consumer to obtain a refund, including, but not limited to, a return authorization number, failing to employ technology and personnel sufficient to enable a consumer to obtain such mechanism within one business day of the consumer's first attempt to obtain such mechanism.

II.

Business Activities Prohibited Pursuant to the Electronic Fund Transfer Act

IT IS FURTHER ORDERED that Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise, whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from:

A. In connection with any consumer who is enrolled into any Continuity Program subsequent to the date of this Order and who uses a debit card or other means of electronic funds transfer,

- 1. failing to obtain written authorization for preauthorized Electronic

Fund Transfers from a consumer's account before initiating any Preauthorized Electronic Fund Transfer, as required by Section 907(a) of EFTA, 15 U.S.C. § 1693e(a) and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I; and

2. failing to maintain procedures reasonably adapted to avoid an unintentional failure to obtain written authorization for a Preauthorized Electronic Fund Transfer, as required in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I; and

B. In connection with any consumer who was enrolled into any Continuity Program prior to the date of this Order and who indicated the use of a credit card when in fact a debit card was used, if entities covered by this provision later find that the card used is a debit card, failing to obtain written authorization for preauthorized Electronic Fund transfers from the consumer's account as soon as reasonably possible, or ceasing to debit the consumer's account, as required by Section 907(a) of EFTA, 15 U.S.C. § 1693e(a) and Section 205.10(b) of Regulation E, 12 C.F.R. § 205.10(b), as more fully set out in Section 205.10 of the Federal Reserve Board's Official Staff Commentary to Regulation E, 12 C.F.R. § 205, Supp. I.

III.

Prohibited Representations About Smoking-Cessation Products

IT IS FURTHER ORDERED that, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any smoking-cessation product, Defendants, and their officers, agents, directors, servants, employees, salespersons, independent contractors, attorneys, corporations, subsidiaries, affiliates, successors, and assigns, and all other persons or entities in active concert or participation with them, who receive actual notice of this Order by personal service or otherwise,

whether acting directly or through any trust, corporation, subsidiary, division, or other device, or any of them, are hereby temporarily restrained and enjoined from making any representation, in any manner, expressly or by implication, about the absolute or comparative benefits, performance, efficacy, safety, or side effects of such product, including, but not limited to, any representation that such product:

A. Is more effective than nicotine patches, nicotine gum, and prescription medications for smoking cessation; and

B. Has a certain level of effectiveness;
unless the representation, including any such representation made through the use of endorsements or trade names, is true, non-misleading, and, at the time it is made, Defendants possess and rely upon competent and reliable scientific evidence that substantiates such representation.

IV.

ASSET FREEZE

IT IS FURTHER ORDERED that Defendants and their officers, directors, agents, servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates, successors, assigns, and those persons or entities in active concert or participation with them who receive actual notice of this Order by personal service, facsimile, or otherwise, are hereby temporarily restrained and enjoined from:

A. Selling, liquidating, assigning, transferring, converting, loaning, encumbering, pledging, concealing, dissipating, spending, withdrawing, or otherwise disposing of any funds, real or personal property, or other assets or any interest therein, wherever located, including any assets outside the territorial United States, that are:

1. in the actual or constructive possession of any Defendant; or
2. owned or controlled by, or held, in whole or in part for the benefit of, or subject to access by, or belonging to, any Defendant; or
3. in the actual or constructive possession of, or owned or controlled by, or subject to access by, or belong to, any corporation,

1 partnership, trust, or other entity directly or indirectly under the
2 control of any Defendant;

3 B. Opening or causing to be opened any safe deposit boxes titled in the name
4 of any Defendant, or subject to access by any Defendant;

5 C. Incurring charges or cash advances on any credit or debit card issued in the
6 name, singly or jointly, of any Defendant, or any corporation, partnership, or other entity
7 directly or indirectly owned, managed, or controlled by any Defendant; and

8 D. Failing to disclose to the Commission, immediately upon service of this
9 Order, information that fully identifies each asset of any Defendant, and each entity
10 holding such asset, including, but not limited to, the entity's name, address, and
11 telephone number, the number of the account, and the name under which the account is
12 held.

13 **Provided, however,** that, pending further order of the Court, Defendants Kenneth
14 Chan and Albert Chen shall each be allowed to spend up to, but no more than, \$ _____
15 per day of previously acquired assets for living expenses out of a personal account which
16 has been identified to the Commission.

17 **V.**

18 **RETENTION OF ASSETS BY THIRD PARTIES**

19 **IT IS FURTHER ORDERED** that, pending determination of the Commission's
20 request for a preliminary injunction, any bank, savings and loan, financial or brokerage
21 institution, fund, escrow agent, trustee, mail receipt facility, or other person or entity
22 served with a copy of this Order, or who otherwise has actual knowledge of this Order,
23 that has possession, custody, or control of any account, asset, safe deposit box, or
24 document held on behalf of, or relating or belonging to NextClick Media, LLC; Next
25 Internet, LLC; Kenneth Chan; or Albert Chen shall:

26 A. Hold and retain within such entity's or person's control, and prohibit the
27 withdrawal, removal, assignment, transfer, pledge, hypothecation, encumbrance,
28 disbursement, dissipation, conversion, sale, liquidation, or other disposal of any funds,

documents, property, or other assets held by or under such entity's or person's control:

1. on behalf of, or for the benefit of, any Defendant;
2. in any account maintained in the name of, or subject to withdrawal by, any Defendant; or
3. that are subject to access or use by, or under the signatory power of, any Defendant;

B. Deny access to any safe deposit box that is:

1. titled in the name, individually or jointly, of any Defendant; or
2. subject to access by any Defendant;
3. **Provided, however,** that the Temporary Receiver may have access to any safe deposit box titled in the name of NextClick Media, LLC, or Next Internet, LLC, or subject to access by agents of NextClick Media, LLC, or Next Internet, LLC;

C. Provide to counsel for the Commission and to the Temporary Receiver, within three (3) days, a statement setting forth:

1. the identification of each account or asset titled in the name, individually or jointly, or held on behalf of, or for the benefit of, any Defendant, whether in whole or in part;
2. the balance of each such account, or a description of the nature and value of such asset;
3. the identification of any safe deposit box that is either titled in the name of, individually or jointly, or is otherwise subject to access or control by, any Defendant, whether in whole or in part; and
4. for any account, safe deposit box, or other asset that has been closed or removed within one year from the date of entry of this Order, the date closed or removed and the balance on said date; and

D. Upon request by the Commission or by the Temporary Receiver, promptly provide the Commission or the Temporary Receiver with copies of all records or other

1 documentation pertaining to such account, asset, or safe deposit box, including, but not
2 limited to, originals or copies of account applications, account statements, signature
3 cards, checks, drafts, deposit tickets, transfers to and from the accounts, all other debit
4 and credit instruments or slips, currency transaction reports, 1099 forms, and safe deposit
5 box logs.

6 The accounts subject to this Paragraph include existing assets and assets deposited
7 after the effective date of this Order. This Paragraph shall not prohibit transfers or
8 withdrawals in accordance with any provision of this Order, authorized in writing by
9 counsel for the Commission, by the Temporary Receiver, or by further order of the Court.

10 **VI.**

11 **PRESERVATION OF RECORDS AND OTHER EVIDENCE**

12 **IT IS FURTHER ORDERED** that Defendants, and their officers, directors,
13 agents, servants, employees, salespersons, distributors, corporations, subsidiaries,
14 affiliates, successors, assigns, and those persons or entities in active concert or
15 participation with them who receive actual notice of this Order by personal service,
16 facsimile, or otherwise, are hereby enjoined from:

17 A. Destroying, erasing, mutilating, concealing, altering, transferring or
18 otherwise disposing of, in any manner, directly or indirectly, any smoking cessation
19 product or any product involving a Continuity Program advertised, marketed, promoted,
20 offered for sale, distributed, or sold by any Defendant;

21 B. Destroying, erasing, mutilating, concealing, altering, transferring or
22 otherwise disposing of, in any manner, directly or indirectly, contracts, agreements,
23 customer files, customer lists, customer addresses and telephone numbers,
24 correspondence, advertisements, brochures, sales material, training material, sales
25 presentations, documents evidencing or referring to products or services sold by
26 Defendants, data, computer tapes, disks, or other computerized records, books, written or
27 printed records, handwritten notes, telephone logs, "verification" or "compliance" tapes
28 or other audio or video tape recordings, receipt books, invoices, postal receipts, ledgers,

1 personal and business canceled checks and check registers, bank statements, appointment
 2 books, copies of federal, state or local business or personal income or property tax
 3 returns, and other documents or records of any kind, including electronically-stored
 4 materials, that relate to the business practices or business or personal finances of any
 5 Defendant or other entity directly or indirectly under the control of any Defendant; and

6 C. Failing to create and maintain books, records, and accounts which, in
 7 reasonable detail, accurately, fairly, and completely reflect the incomes, assets,
 8 disbursements, transactions, and use of monies by any Defendant or other entity directly
 9 or indirectly under the control of any Defendant.

10 VII.

11 ACCOUNTING PROVISIONS

12 **IT IS FURTHER ORDERED** that, within five (5) business days after service of
 13 this Order,

14 A. For any smoking-cessation product or service, or for any product or service
 15 involving a Continuity Program, which Defendants, their officers, directors, agents,
 16 servants, employees, salespersons, distributors, corporations, subsidiaries, affiliates,
 17 successors, or assigns have advertised, marketed, promoted, offered for sale, or sold,
 18 Defendants shall serve on counsel for the Commission a detailed accounting, broken
 19 down by product or service, of:

- 20 1. all gross revenues obtained from sales connected with any such
 21 promotions, products, or services from inception of sales through
 22 the date of service of this Order;
- 23 2. all net profits obtained from sales connected with any such
 24 promotions, products, or services from inception of sales through
 25 the date of service of this Order; and
- 26 3. the total number of sales connected with any such promotions,
 27 products, or services;

28 B. Defendants shall prepare and provide to the Commission complete and

1 accurate individual and corporate financial statements, in a form to be provided by the
2 Commission, signed under penalty of perjury, and copies of personal and corporate
3 income tax returns (local, state, and federal) for the last three (3) years;

4 C. Defendants shall further provide the Commission with a complete and
5 accurate corporate financial statement in a form to be provided by the Commission,
6 signed under penalty of perjury, for any corporation owned or controlled by any
7 Defendant and not named in the caption;

8 D. The Receivership Defendants shall provide profit-and-loss statements from
9 the date of incorporation or formation through the date of this Order;

10 E. Defendants shall further provide the Commission with statements, verified
11 under oath, of all transfers and assignments of assets and property worth five thousand
12 dollars (\$5,000) or more by any Defendant since January 1, 2006, that shall include the
13 amount or value transferred or assigned, the name and address of the transferee or
14 assignee, the date of the transfer or assignment, and the type and amount of consideration
15 paid to any such Defendant; and

16 F. Each Defendant shall provide the Commission with access to records and
17 documents pertaining to assets of such Defendant that are held by financial institutions
18 outside the territory of the United States, by signing a document entitled "Consent to
19 Release of Financial Records," which the Commission shall provide.

20 **VIII.**

21 **REPATRIATION OF ASSETS**

22 **IT IS FURTHER ORDERED** that, within five (5) business days after service of
23 this Order, each Defendant shall:

24 A. Repatriate to the United States all funds, documents, or assets in foreign
25 countries held, jointly or singly, either by, for the benefit of, or under the direct or
26 indirect control of such Defendant;

27 B. On the same business day as any repatriation under Subparagraph A above,
28 1. notify the Commission and the Temporary Receiver of the name and

1 location of the financial institution or other entity that is the
2 recipient of such funds, documents, or assets; and

3 2. serve this Order on any such financial institution or other entity;

4 C. Provide the Commission and the Temporary Receiver with a full
5 accounting of all funds, documents, and assets outside of the territory of the United
6 States held, jointly or singly, either by, for the benefit of, or under the direct or indirect
7 control of such Defendant; and

8 D. Hold and retain all repatriated funds, documents, and assets and prevent
9 any transfer, disposition, or dissipation whatsoever of any such assets or funds.

10 **IX.**

11 **INTERFERENCE WITH REPATRIATION**

12 **IT IS FURTHER ORDERED** that Defendants are hereby temporarily restrained
13 and enjoined from taking any action, directly or indirectly, which may result in the
14 encumbrance or dissipation of foreign assets, or in the hindrance of the repatriation
15 required by Section VIII of this Order, including but not limited to:

16 A. Sending any statement, letter, fax, e-mail or wire transmission, telephoning
17 or engaging in any other act, directly or indirectly, that results in a determination by a
18 foreign trustee or other entity that a “duress” event has occurred under the terms of a
19 foreign trust agreement, until such time that all assets have been fully repatriated
20 pursuant to Section VIII of this Order; and

21 B. Notifying, or causing the notification of, any trustee, protector or other
22 agent of any foreign trust or other related entities of either the existence of this Order, or
23 of the fact that repatriation is required pursuant to a Court Order, until such time that all
24 assets have been fully repatriated pursuant to Section VIII of this Order.

25 **X.**

26 **NOTIFICATION OF BUSINESS ACTIVITIES**

27 **IT IS FURTHER ORDERED** that Defendants Kenneth Chan and Albert Chen
28 are hereby restrained and enjoined from creating, operating, or exercising any control

1 over any business entity, including any partnership, limited partnership, joint venture,
2 sole proprietorship, or corporation, without first providing counsel for the Commission
3 with a written statement disclosing the following: (1) the name of the business entity; (2)
4 the address and telephone number of the business entity; (3) the names of the business
5 entity's officers, directors, principals, managers, and employees; and (4) a detailed
6 description of the business entity's intended activities.

7 **IT IS FURTHER ORDERED** that Defendants Kenneth Chan and Albert Chen
8 shall notify the Commission at least seven (7) days prior to any affiliation with any new
9 or previously inactive business or employment. Each notice shall include the applicable
10 Defendant's new business address and a statement of the nature of the new business or
11 employment and of his duties and responsibilities in connection with that business or
12 employment.

13 **XI.**

14 **NON-DISCLOSURE OF CONSUMER LISTS**

15 **IT IS FURTHER ORDERED** that Defendants are temporarily restrained and
16 enjoined from selling, renting, leasing, transferring, or otherwise disclosing the name,
17 date of birth, address, telephone number, credit card number, bank account number, e-
18 mail address, or other identifying information of any person who submitted such
19 information to Defendants at any time prior to entry of this Order, **provided, however,**
20 that Defendants may disclose such identifying information to a law enforcement agency,
21 or as required by any law, regulation, or court order.

22 **XII.**

23 **APPOINTMENT OF TEMPORARY RECEIVER**

24 **IT IS FURTHER ORDERED** that _____ is hereby
25 appointed Temporary Receiver, with the full power of an equity receiver, for the
26 Receivership Defendants. The Temporary Receiver shall be the agent of this Court and
27 solely the agent of this Court in acting as receiver under this Order. The Temporary
28 Receiver shall be accountable directly to this Court. The Temporary Receiver shall file

1 reports with the Court every ninety (90) days updating the Court on the status of
2 Receivership Defendants, the fulfillment of the Temporary Receiver's duties as set forth
3 in this Order, and any other relevant issues whose inclusion the Temporary Receiver
4 deems appropriate. The Temporary Receiver shall comply with all Local Rules of this
5 Court governing receivers. The Temporary Receiver has the directions and authority to:

6 A. Assume full control of the Receivership Defendants and all power of the
7 Receivership Defendants' directors, officers, and managers, and remove Defendants
8 Kenneth Chan and Albert Chen, and any other officer, independent contractor, employee,
9 attorney, or agent of the Receivership Defendants, from control or management of, or
10 participation in, the affairs of the Receivership Defendants as the Temporary Receiver
11 deems necessary and advisable;

12 B. Take immediate and exclusive custody, control, and possession of all
13 properties, premises, assets, and documents of, in the possession of, or under the control
14 of, either Receivership Defendant, wherever situated, including, but not limited, to 667
15 Folsom Street in San Francisco, CA, 94107; 880 Harrison Street in San Francisco, CA,
16 94107; 2525 East Charleston Road, Suite 101, and 2513 East Charleston Road, Suite
17 102, in Mountain View, CA, 94043; and PO Box 390351 in Mountain View, CA, 94039.
18 The Temporary Receiver shall have full power to divert mail and to sue for, collect,
19 receive, and take possession of:

- 20 1. all assets and documents of the Receivership Defendants and
21 members of the public whose interests are now held by or are under
22 the direction, possession, custody, or control of either Receivership
23 Defendant; and
- 24 2. all sums of money now or hereafter due and owing to either
25 Receivership Defendant. Provided, however, that the Temporary
26 Receiver shall not attempt to collect any amount from a consumer if
27 the Temporary Receiver believes the consumer was a victim of the
28 unfair or deceptive acts or practices alleged in the Complaint in this

1 matter;

2 C. Perform all acts necessary to conserve, hold, manage, and preserve the
3 value of all such assets;

4 D. Hold, preserve, and administer the business of the Receivership Defendants
5 until further order of this Court, with full authority to perform all acts necessary or
6 incidental thereto, including retaining, hiring, or dismissing any employees, independent
7 contractors, or agents;

8 E. Take such actions and enter into such agreements in connection with the
9 administration of the Receivership Defendants as the Temporary Receiver deems
10 necessary;

11 F. Choose, engage, and employ attorneys, accountants, appraisers, and other
12 independent contractors, and technical specialists, as the Temporary Receiver deems
13 advisable or necessary in the performance of duties and responsibilities under the
14 authority granted by this Order;

15 G. Make payments and disbursements from the receivership estate that the
16 Temporary Receiver deems necessary to secure or preserve the Receivership Defendants'
17 assets or to carry out the Temporary Receiver's mandate under this Order;

18 H. Institute, prosecute and defend, compromise, intervene in, or become party
19 to such actions or proceedings in state, federal, or foreign court that the Temporary
20 Receiver deems necessary to collect, recover, protect, maintain, or preserve the value of
21 the assets of the Receivership Defendants or to carry out the Temporary Receiver's
22 mandate under this Order;

23 I. Defend, compromise, or otherwise dispose of any actions or proceedings
24 instituted against the Temporary Receiver in his role as Temporary Receiver or the
25 Receivership Defendants, whether now pending or hereinafter filed, that the Temporary
26 Receiver deems necessary to preserve the assets of the Receivership Defendants or to
27 carry out the Temporary Receiver's mandate under this order;

28 J. Take all steps the Temporary Receiver deems necessary to secure the

1 business premises of the Receivership Defendants, including, but not limited to:

- 2 1. completing a written inventory of all receivership assets;
- 3 2. obtaining pertinent information from all employees and other agents
4 of the Receivership Defendants, such as the name, home address,
5 social security number, job description, method of compensation,
6 accrued and unpaid commission and compensation of each
7 employee or agent;
- 8 3. changing the premises' locks and disconnecting any computer
9 modems or other means of access to the computer systems or to
10 documents maintained at that location; and
- 11 4. requiring any persons present on the premises to leave the premises,
12 to provide the Temporary Receiver with proof of identification, and
13 to demonstrate to the Temporary Receiver's satisfaction that such
14 persons are not removing from the premises any of the Receivership
15 Defendants' documents or assets;

16 K. Obtain, by presentation of this Order, tangible and intangible assets as well
17 as information in the custody or control of any person, firm, or entity sufficient to
18 identify the accounts, employees, properties, or other assets or obligations of the
19 Receivership Defendants;

20 L. Issue subpoenas to obtain documents pertaining to the receivership,
21 conduct discovery in this action on behalf of the receivership estate, attend any
22 deposition noticed by any party to this action, and ask any question of any deponent
23 which, in the Temporary Receiver's opinion, is pertinent to the receivership estate;

24 M. Allow representatives of the Commission and the Defendants reasonable
25 access to inspect the Receivership Defendants' books, records, accounts, premises, and
26 other property, wherever located;

27 N. Determine and implement the manner in which the Receivership
28 Defendants will comply with, and prevent violations of, this Order and all other

1 applicable laws, including, but not limited to, revising sales materials and implementing
2 monitoring procedures;

3 O. Continue and conduct the business of the Receivership Defendants in such
4 manner, to such extent, and for such duration as the Temporary Receiver may in good
5 faith deem to be necessary or appropriate to operate the business profitably and lawfully,
6 if at all; provided, however, that the continuation and conduct of the business shall be
7 conditioned upon the Temporary Receiver's good faith determination that the businesses
8 can be lawfully operated at a profit using the assets of the receivership estate; and

9 P. Open one or more bank accounts as designated depositories for funds of
10 the Receivership Defendants. The Temporary Receiver shall deposit all funds of the
11 Receivership Defendants in such designated accounts and shall make all payments and
12 disbursements from the receivership estate from such accounts.

13 **XIII.**

14 **COMPENSATION FOR TEMPORARY RECEIVER**

15 **IT IS FURTHER ORDERED** that the Temporary Receiver and all personnel
16 hired by the Temporary Receiver shall be entitled to reasonable compensation for the
17 services they render to the receivership estate and for the cost of actual out-of-pocket
18 expenses incurred by them, from the assets now held by, in the possession or control of,
19 or which may be received by the Receivership Defendants. The Temporary Receiver
20 shall file with the Court and serve on the parties periodic requests for payment, outlining
21 the services rendered and the related fees and expenses, with the first such request filed
22 no more than sixty (60) days after the entry of this Order. The Temporary Receiver shall
23 not increase the hourly rates used as the bases for such fee applications without prior
24 approval of the Court.

25 **XIV.**

26 **TEMPORARY RECEIVER'S BOND**

27 **IT IS FURTHER ORDERED** that the Temporary Receiver shall file with the
28 Clerk of this Court a bond in the sum of _____ with sureties to be

1 approved by the Court, conditioned that the Temporary Receiver will well and truly
2 perform the duties of the office and abide by and perform all acts the Court directs.

3 **XV.**

4 **DELIVERY OF RECEIVERSHIP PROPERTY**

5 **IT IS FURTHER ORDERED** that Defendants and any other person or entity
6 served with a copy of this Order, shall immediately deliver or transfer possession,
7 custody, and control of the following to the Temporary Receiver:

8 A. All assets of the Receivership Defendants;

9 B. All documents and records relating to the assets of the Receivership
10 Defendants, including, but not limited to, financial and accounting records, balance
11 sheets, income statements, bank records (including monthly statements, canceled checks,
12 records of wire transfers, and check registers), distributor lists, and title documents;

13 C. All keys, lock combinations, passwords, or codes required to open, gain
14 access to, or secure any of the Receivership Defendants' assets or documents, including,
15 but not limited to, access to their business premises, computer systems or files, telephone
16 or other communication systems, and bank accounts; and

17 D. Information identifying the assets, employees, or obligations of the
18 Receivership Defendants.

19 **IT IS FURTHER ORDERED** that in the event any person or entity fails to
20 deliver or transfer any asset or otherwise fails to comply with any provision of this
21 Paragraph, the Temporary Receiver may file *ex parte* an Affidavit of Non-Compliance
22 regarding the failure. Upon the filing of the affidavit, the Court may authorize, without
23 additional process or demand, Writs of Possession or Sequestration or other equitable
24 writs requested by the Temporary Receiver. The writs shall authorize and direct the
25 United States Marshal or any sheriff or deputy sheriff of any county (pursuant to Fed. R.
26 Civ. P. 4(c)(1)), or any other federal or state law enforcement officer, to seize the asset,
27 document, or other thing and to deliver it to the Temporary Receiver.
28

XVI.

COOPERATION WITH THE TEMPORARY RECEIVER

IT IS FURTHER ORDERED that all Defendants, and their agents, servants, employees, and attorneys, and all persons or entities directly or indirectly under the control of any of them, and all other persons or entities in active concert or participation with any of them who receive actual notice of this Order by personal service or otherwise, and each such person, shall cooperate fully with and assist the Temporary Receiver. Such cooperation and assistance shall include, but not be limited to, providing any information to the Temporary Receiver that the Temporary Receiver deems necessary to exercise the authority and discharge the responsibilities of the Temporary Receiver under this Order; providing any password required to access any computer or electronic files in any medium; or advising all persons who owe money to any of the Receivership Defendants (other than customers) that all debts should be paid directly to the Temporary Receiver. All Defendants are hereby restrained and enjoined from directly or indirectly:

A. Transacting any of the business of the Receivership Defendants, or transacting business under the names NextClick Media, LLC; Next Internet, LLC; any of their dba entities; or any substantially similar names;

B. Destroying, secreting, defacing, transferring, or otherwise altering or disposing of any documents of either of the Receivership Defendants, including, but not limited to, books, records, accounts, or any other papers of any kind or nature;

C. Transferring, receiving, altering, selling, encumbering, pledging, assigning, liquidating, or otherwise disposing of any assets owned, controlled, or in the possession or custody of, or in which an interest is held or claimed by, either of the Receivership Defendants, or the Temporary Receiver;

D. Excusing debts owed to either Receivership Defendant;

E. Failing to notify the Temporary Receiver of any asset, including accounts, of either Receivership Defendant held in any name other than the name of either

1 Receivership Defendant, or by any person or entity other than the Receivership
2 Defendants, or failing to provide any assistance or information requested by the
3 Temporary Receiver in connection with obtaining possession, custody, or control of such
4 assets; or

5 F. Doing any act or refraining from any act whatsoever to interfere with the
6 Temporary Receiver's taking custody, control, possession, or management of the assets
7 or documents subject to this receivership; or to harass or interfere with the Temporary
8 Receiver in any way; or to interfere in any manner with the exclusive jurisdiction of this
9 Court over the assets or documents of either Receivership Defendant; or to refuse to
10 cooperate with the Temporary Receiver or the Temporary Receiver's duly authorized
11 agents in the exercise of their duties or authority under any order of this Court.

12 **XVII.**

13 **TRANSFER OF FUNDS TO THE TEMPORARY RECEIVER**

14 **IT IS FURTHER ORDERED** that, upon service of a copy of this Order, all
15 banks, broker-dealers, savings and loan associations, escrow agents, title companies,
16 commodity trading companies, and other financial institutions shall cooperate with all
17 reasonable requests of the Temporary Receiver relating to implementation of this Order,
18 including transferring funds at his direction and producing records related to the assets of
19 either of the Receivership Defendants.

20 **XVIII.**

21 **STAY OF ACTIONS**

22 **IT IS FURTHER ORDERED** that, except by leave of this Court and except for
23 any federal, state, or local law enforcement or regulatory authority action against the
24 Receivership Defendants, during the pendency of the receivership, Defendants and all
25 other persons seeking to establish or enforce any claim, right, or interest against or on
26 behalf of either Receivership Defendant, be and hereby are stayed from:

27 A. Commencing, prosecuting, continuing, or enforcing any suit against either
28 Receivership Defendant, except that such actions may be filed to toll any applicable

1 statute of limitations;

2 B. Commencing, prosecuting, continuing, or enforcing any suit or proceeding
3 in the name of or on behalf of either Receivership Defendant;

4 C. Accelerating the due date of either Receivership Defendant's obligation or
5 claimed obligation; enforcing any lien upon, or taking, attempting to take, or retaining
6 possession of either Receivership Defendant's assets; attempting to foreclose, forfeit,
7 alter, or terminate any interests of either Receivership Defendant, whether such acts are
8 part of a judicial proceeding or otherwise;

9 D. Using self-help or executing or issuing any process to impound, take
10 possession of, interfere with, create, or enforce a lien upon any asset owned by or in the
11 possession of either Receivership Defendant, the Temporary Receiver, or any agent
12 appointed by the Temporary Receiver; and

13 E. Committing any act to interfere with the Temporary Receiver's taking
14 control, possession, or management of the Receivership Defendants and their assets and
15 documents, or to interfere with the exclusive jurisdiction of this Court over the property
16 and assets of the Receivership Defendants.

17 **Provided** that this Paragraph does not stay any suit pending in a State court, upon
18 motion and a finding by the Court that the moving party will suffer substantial injury if it
19 is not permitted to proceed.

20 **XIX.**

21 **LIMITED EXPEDITED DISCOVERY**

22 **IT IS FURTHER ORDERED** that the Commission is granted leave at any time
23 after service of this Order to take the deposition of and demand the production of
24 documents from any person or entity for the purpose of discovering the location of a
25 Defendant or the nature, location, status, and extent of assets of any Defendant or their
26 affiliates. Two (2) business days' notice shall be deemed sufficient for any such
27 production of documents or the taking of a deposition from any Defendant, and three (3)
28 business days' notice shall be deemed sufficient for any such production of documents or

1 the taking of a deposition from any other person or entity including, but not limited to,
2 any financial institution. The production of documents submitted pursuant to this
3 provision shall not in any way waive the Commission's rights to seek the production of
4 additional documents. The limitations and conditions set forth in Fed. R. Civ. P.
5 30(a)(2)(B) regarding subsequent depositions of an individual shall not apply to
6 depositions taken pursuant to this Section XIX, nor shall any depositions taken pursuant
7 to this Section XIX count towards the ten-deposition limit set forth in Fed. R. Civ. P.
8 30(a)(2)(A).

9 **XX.**

10 **RIGHT OF IMMEDIATE ACCESS**

11 **IT IS FURTHER ORDERED** that Defendants, the Temporary Receiver, and any
12 other person who receives actual notice of this Order by personal service or otherwise,
13 shall permit the Commission's employees, agents, and assistants immediate access to any
14 Defendant's business premises and storage facilities, whether owned, controlled, or used
15 by any Defendant in whole or in part, including, but not limited to, the offices located at
16 667 Folsom Street in San Francisco, CA, 94107; 880 Harrison Street in San Francisco,
17 CA, 94107; and 2525 East Charleston Road, Suite 101 and 2513 East Charleston Road,
18 Suite 102, in Mountain View, CA, 94043. The purpose of this access shall be to effect
19 service and to inspect, copy, and inventory documents or other material relevant to this
20 action. The Commission's representatives may remove original documents from
21 Defendants' business premises to make photocopies, provided that the originals are
22 returned within a reasonable period of time. Defendants, to the extent that they are in
23 possession of documents relevant to this action, shall provide Commission employees,
24 agents, and assistants with any necessary means of access to these documents including,
25 but not limited to, keys and lock combinations, computer access codes, and storage
26 access information. Defendants are hereby enjoined and restrained from interfering with
27 the Commission's right of access described herein.

28 **IT IS FURTHER ORDERED** that the Temporary Receiver shall subsequently

1 allow the Commission's representatives, and the representatives of the Receivership
2 Defendants and of Defendants Kenneth Chan and Albert Chen, and Defendants Kenneth
3 Chan and Albert Chen themselves reasonable access to the business premises of the
4 Receivership Defendants for the purpose of inspecting and copying any and all books,
5 records, accounts, and other property owned by or in the possession of the Receivership
6 Defendants. The Temporary Receiver shall have the discretion to determine the time and
7 manner of this access.

8 **IT IS FURTHER ORDERED** that if, at the time of service of this Order, any
9 records or property relating to any Defendant's business or assets are located in the
10 personal residence of any individual Defendant, then such individual Defendant shall,
11 within forty-eight (48) hours of service of this Order, produce to the Commission, at a
12 location designated by the Commission:

13 A. All contracts, accounting data, written or electronic correspondence,
14 advertisements, computer tapes, discs, or other computerized or electronic records,
15 books, written or printed records, handwritten notes, telephone logs, telephone scripts,
16 telephone bills, receipt books, membership records and lists, refund records, receipts,
17 ledgers, bank records (including personal and business monthly statements, canceled
18 checks, records of wire transfers, and check registers), appointment books, copies of
19 federal, state, and local business or personal income or property tax returns, 1099 forms,
20 title records, and other documents or records of any kind that relate to any Defendant's
21 business and assets; and

22 B. All computers and data in whatever form, used by Defendants, in whole or
23 in part, relating to any Defendant's business and assets, along with any passwords or
24 other codes necessary for accessing such computers or data.

25 **XXI.**

26 **CONSUMER REPORTS**

27 **IT IS FURTHER ORDERED** that the Commission may obtain consumer reports
28 concerning any Defendant pursuant to Section 604(a)(1) of the Fair Credit Reporting

1 Act, 15 U.S.C. § 1681b(a)(1), and that, upon written request, any credit reporting agency
2 from which such reports are requested shall provide them to the Commission.

3 **IT IS FURTHER ORDERED** that the Commission may provide to the
4 Temporary Receiver copies of any consumer reports it receives pursuant to this
5 provision.

6 **XXII.**

7 **DISTRIBUTION OF ORDER BY DEFENDANTS**

8 **IT IS FURTHER ORDERED** that Defendants shall immediately provide a copy
9 of this Order to each affiliate, subsidiary, division, sales entity, successor, assign, officer,
10 director, employee, independent contractor, distributor, agent, attorney, ad broker,
11 advertising agency, fulfillment house, call center, domain registrar, mail receipt facility,
12 and representative of any Defendant, and, within ten (10) calendar days following service
13 of this Order on Defendants, Defendants shall provide the Commission with an affidavit
14 identifying the names, titles, addresses, and telephone numbers of the persons and entities
15 that Defendants have served with a copy of this Order in compliance with this provision.
16 The Temporary Receiver has no obligation under this provision.

17 **XXIII.**

18 **SERVICE OF THIS ORDER BY THE COMMISSION**

19 **IT IS FURTHER ORDERED** that copies of this Order may be served by
20 facsimile transmission, email, personal or overnight delivery, or U.S. Mail, by employees
21 of the Commission, employees of any other law enforcement agency, agents of any
22 process servers retained by the Commission, the Temporary Receiver, or agents of the
23 Temporary Receiver on (1) Defendants, (2) any financial institution or other entity or
24 person that may have possession, custody, or control of any documents or assets of any
25 Defendant, or (3) any other person or entity that may be subject to any provision of this
26 Order. Service upon any branch or office of any entity shall effect service upon the
27 entire entity.
28

1 **XXIV.**

2 **ORDER TO SHOW CAUSE**

3 **IT IS FURTHER ORDERED**, pursuant to Fed. R. Civ. P. 65(b), that Defendants
4 shall appear before this Court on the ____ day of _____, 2008 at _____
5 ____m., to show cause, if there is any, why this Court should not enter a preliminary
6 injunction, pending final ruling on the Complaint, against Defendants enjoining them
7 from violations of Sections 5(a) and 12 of the FTC Act, 15 U.S.C. §§ 45(a) and 52,
8 Section 907(a) of EFTA, 15 U.S.C. § 1693a(e), and Section 205.10(b) of Regulation E,
9 12 C.F.R. § 205.10(b), and imposing such additional relief as may be appropriate.

10 **XXV.**

11 **SERVICE OF PLEADINGS, MEMORANDA, AND OTHER EVIDENCE**

12 **IT IS FURTHER ORDERED** that Defendants shall file with the Court and serve
13 on Plaintiff's counsel any answering affidavits, pleadings, motions, expert reports or
14 declarations, and/or legal memoranda no later than four (4) business days prior to the
15 hearing on Plaintiff's request for a preliminary injunction.

16 Plaintiff may file responsive or supplemental pleadings, materials, affidavits, or
17 memoranda with the Court and serve the same on counsel for Defendants no later than
18 one (1) business day prior to the preliminary injunction hearing in this matter.

19 *Provided that* service shall be performed by personal or overnight delivery, by
20 facsimile, by email, or in accordance with the Court's ECF procedures, and documents
21 shall be delivered so that they shall be received by the other parties no later than 4:00
22 p.m. (Pacific Daylight Time) on the appropriate dates listed in this Section XXV.

23 **XXVI.**

24 **MOTION FOR LIVE TESTIMONY; WITNESS IDENTIFICATION**

25 **IT IS FURTHER ORDERED** that the question of whether this Court should
26 enter a preliminary injunction pursuant to Rule 65 of the Federal Rules of Civil
27 Procedure enjoining the Defendants during the pendency of this action shall, in
28 accordance with Local Rule 7-6 of the Northern District of California, be resolved on the

1 pleadings, declarations, exhibits, and memoranda filed by, and oral argument of, the
2 parties. Oral testimony shall be heard only on further order of this Court. Any motion
3 requesting oral testimony shall be filed with the Court and served on counsel for the other
4 parties at least three (3) business days prior to the preliminary injunction hearing in this
5 matter. Such motion shall set forth the name, address, and telephone number of each
6 proposed witness, a detailed summary or affidavit revealing the substance of each
7 proposed witness's expected testimony, and an explanation of why the taking of oral
8 testimony would be helpful to this Court. Any papers opposing a timely motion to
9 present oral testimony or to present oral testimony in response to another party's timely
10 motion to present oral testimony shall be filed with this Court and served on the other
11 parties at least two (2) business days prior to the preliminary injunction hearing in this
12 matter, *provided* that service shall be performed by personal or overnight delivery or by
13 facsimile, and documents shall be delivered so that they shall be received by the other
14 parties no later than 4:00 p.m. (Pacific Daylight Time) on the appropriate dates provided
15 in this Section XXVI.

16 **XXVII.**

17 **CORRESPONDENCE WITH AND NOTICE TO PLAINTIFF**

18 **IT IS FURTHER ORDERED** that, with regard to any correspondence,
19 pleadings, or notifications related to this Order, except as specified above, service on the
20 Commission shall be performed by personal or overnight delivery, by facsimile, by e-
21 mail, or in accordance with the Court's ECF procedures to:

22 THOMAS DAHDOUNH
23 Federal Trade Commission
24 901 Market Street, Suite 570
25 San Francisco, CA 94103
26 Phone (415) 848-5100/Fax (415) 848-5184
27 email: tdahdouh@ftc.gov

28 **XXVIII.**

EXPIRATION OF THIS ORDER

IT IS FURTHER ORDERED that the Temporary Restraining Order granted

1 herein shall expire on _____, 2008, at 11:59 p.m. (Pacific Standard
2 Time), unless within such time the Order, for good cause shown, is extended, or unless,
3 as to any Defendant, the Defendant consents that it should be extended for a longer
4 period of time.

5 **XXIX.**

6 **RETENTION OF JURISDICTION**

7 **IT IS FURTHER ORDERED** that this Court shall retain jurisdiction of this
8 matter for all purposes.

9 IT IS SO ORDERED:

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11
12 DATED: _____ UNITED STATES DISTRICT JUDGE
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